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October 3, 2005

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 14, 2005

Case Number: TSO-0231

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be granted. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be granted at this time.

I. Background

The individual is an applicant for a DOE security clearance. During a background investigation, a local security office (LSO) uncovered derogatory information about the individual's past alcohol and illegal drug use that raised questions about his suitability to hold a DOE security clearance. After a Personnel Security Interview (PSI) with the individual in May 2004 (2004 PSI) failed to resolve the derogatory information, the LSO referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a psychiatric evaluation. The DOE consultant-psychiatrist examined the individual in June 2004 and concluded that the individual suffers from an Alcohol-Related Disorder, Not Otherwise Specified (NOS) in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revised (DSM-IV-TR). Exhibit (Ex.) 5. The DOE consultant-psychiatrist also opined in a Psychiatric Report that the individual suffers from a significant defect in his judgment and reliability. *Id.*

Based on the psychiatric report and other information uncovered during the background investigation, the LSO sent the individual a letter (Notification Letter) advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. The LSO also advised that the derogatory information fell

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (k) and (l) (hereinafter referred to as Criteria H, K and L respectively).²

Upon his receipt of the Notification Letter the individual, through his attorney, filed a written response to the Notification Letter and exercised his right under the Part 710 regulations by requesting an administrative review hearing. On April 19, 2005, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. After receiving an extension of time from the OHA Director to accommodate the individual's attorney's schedule, I convened a hearing. At the hearing, seven witnesses testified. The LSO called one witness and the individual presented his own testimony and that of five witnesses. In addition to the testimonial evidence, the LSO submitted ten exhibits into the record; the individual tendered six exhibits. On September 13, 2005, I received the hearing transcript (Tr.) at which time I closed the record in the case.

II. Standard of Review

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

² Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion K concerns information that a person has "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 710.8 (k). Criterion L relates in relevant part to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . ." 10 C.F.R. § 710.8(l).

III. Findings of Fact

The individual has a long history of excessive alcohol consumption and illegal drug use. He began consuming alcohol at age 14. Ex. 10 at 9. By his own account, he consumed six to ten beers three nights a week while in college. Ex. 6 at 2. He claims that he consumed the most alcohol in the mid-1990s when he was in his late 20s. Ex. 10 at 18. In 2000, he was arrested and charged with DUI after he failed a sobriety test and registered a .14 and .15 on a breath alcohol content test. The individual lost his license for 30 days, was required to attend DUI school, and served one year probation. According to the individual, he did not stop drinking alcohol after his DUI. By 2004, he was drinking one to five alcoholic beverages four to five nights a week and becoming intoxicated once every two months. *Id.* at 11; Ex. 6 at 2. The individual reports that he has experienced blackouts and hangovers after drinking. Ex. 6 at 2. He admits to reporting to work in a “hung-over” state. *Id.* He also claims to have experienced withdrawal symptoms (e.g. “the shakes”).

The individual’s use of illegal drugs began at age 18. Ex. 10 at 21. Between the ages of 18 and 34, the individual smoked marijuana an average of 10 to 15 times a month. *Id.* at 22. He also admitted to using cocaine, LSD, ecstasy and psychedelic mushrooms. *Id.* at 24-25. He was arrested once in 1987 for possession of marijuana. Ex. 6 at 3.

IV. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. After due deliberation, I have determined that the individual’s access authorization should not be granted at this time. I cannot find that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

A. Criterion H

1. Derogatory Information and Associated Security Concerns

To support Criterion H in this case, the LSO relied on the opinion of a board certified psychiatrist who determined that the individual suffers from an Alcohol Related Disorder NOS. I find that the DOE consultant-psychiatrist clearly articulated in his Psychiatric Report and convincingly testified at the hearing that the individual meets the definition of Alcohol Related Disorder as defined in the DSM-IV-TR. Further, I determine that the DOE consultant-psychiatrist provided compelling reasons why he concluded that the individual’s mental illness causes or may cause a significant defect in his judgment and reliability. A mental illness such as an alcohol disorder can cause a significant defect in a person’s psychological, social and occupational functioning which, in turn, can raise concerns from a security standpoint about possible defects in a person’s judgment, reliability, or stability. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline I, ¶ 27.

2. Mitigation

a. The Individual's Testimony and his Documentary Evidence

The individual testified that he considers himself to be a recovering alcoholic. Tr. at 127. According to his testimony, the individual decided to stop drinking on his own in August 2004 and remained abstinent until Christmas 2004. *Id.* at 130. He admitted that he also consumed alcohol on New Year's Eve in 2004, on SuperBowl Sunday in 2005, and on February 19, 2005. *Id.* On this latter occasion, the individual consumed six alcoholic beverages and became physically ill. Ex. E. The individual reports that his last drink was on February 19, 2005. In March 2005, the individual enrolled in an Early Recovery Program that required him to attend six hours of psycho-educational and psychotherapy group sessions three times each week for a twelve week period. *Id.*, Tr. at 129. After completing the Early Recovery Program in May 2005, the individual elected to join a long-term therapy program that meets once a week. Ex. E at 2. The individual testified that he intends to remain in the long-term therapy program for one year. Tr. at 156. The individual claims that he is committed to maintaining his abstinence because he now has family responsibilities. *Id.* at 131, 137. He explained that he married his wife in July 2004 and became a stepfather to his new wife's 9-year old daughter. *Id.* He also testified that he wants to maintain his job with a DOE contractor and for this reason he is willing to stop consuming alcohol. *Id.* at 142. Finally, the individual admitted that there is alcohol in his house but that "it doesn't bother him." *Id.* at 141.

b. The Psychologist's Testimony

The psychologist who worked with the individual in the Early Recovery Program and currently serves as the individual's therapist in a long-term therapy program testified on the individual's behalf at the hearing. The psychologist explained that he specializes in chemical dependency assessments and treatment and has a general psychotherapy practice for adults and adolescents. *Id.* at 26. He first confirmed that the individual enrolled in an Early Recovery Program in March 2005. *Id.* at 37. He characterized the Early Recovery Program as an intensive outpatient alcohol treatment program. *Id.* According to the psychologist, this program is not a "12-step program" but a medical center-based-clinical program that employs "12-step advocacy" and psychological treatment. *Id.* at 38. He added that the treatment program is led and conducted by mental health professionals, psychologists and clinical social workers who have professional training in the treatment of substance-related disorders. *Id.* The goal of the program, stated the psychologist, is "sustained abstinence and lifestyle changes." *Id.* at 39.

The psychologist diagnosed the individual as suffering from alcohol abuse but agrees with the DOE consultant-psychiatrist's opinion that the individual suffers from an Alcohol Disorder Not Otherwise Specified. *Id.* at 41. He explained that he provided the alcohol abuse diagnosis to justify the treatment regime that he felt was most appropriate for the individual. *Id.* at 42. The psychologist agreed with the DOE consultant-psychiatrist that the individual needs 12 months of sobriety to be considered rehabilitated. *Id.* at 50.

c. Two Friends' Testimony

Two of the individual's friends testified on his behalf. Friend #1 related that he has known the individual for 20 years. *Id.* at 76. He characterized the individual as a "moderate social drinker." *Id.* at 79. He has observed recently that the individual is not consuming alcohol. *Id.* at 81. He speculated that the individual was trying to lose weight. *Id.*

Friend #2 testified that he has known the individual since high school. *Id.* at 85. He has never seen the individual get "out of control" with his drinking although he admitted under cross examination that he has seen the individual intoxicated before. *Id.* at 88, 97. He added that he has not seen the individual intoxicated in the past two years. *Id.* at 97.

d. The Individual's Wife's Testimony

The individual's wife testified that she met the individual two and one-half years ago and the two wed in July 2004. *Id.* at 105, 107. She has a 9-year old daughter from a previous marriage. *Id.* at 100. She related that when she first met the individual he was a "moderate drinker." *Id.* at 105. She claims that she has not seen her husband drunk in one and one-half years. *Id.* She also claims that she last saw her husband consume alcohol at Christmas 2004. *Id.* at 107. She stated that the DOE consultant-psychiatrist's report had a big impact on him. *Id.* at 113. She believes that the classes he attended as part of the Early Recovery Program have educated him about the dangers of excessive alcohol consumption. *Id.* at 109. She advised that her husband is actively engaged with his stepdaughter, helping her with homework and shuttling her to and from soccer practice. *Id.* at 101. She testified convincingly that her husband "doesn't want to drink again." *Id.* at 115. She does, however, keep alcohol in the house because she drinks wine occasionally. *Id.* at 113. In addition, she testified that she buys beer for friends when they come over to the house. *Id.* at 114. According to the wife, the individual does not consume alcohol when friends are drinking beer at the couple's home. *Id.*

e. The DOE Consultant-Psychiatrist's Testimony

The DOE consultant-psychiatrist is board certified in psychiatry and neurology and has spent a substantial segment of his career treating and evaluating patients with drug and alcohol abuse problems. *Id.* at 10. The DOE consultant-psychiatrist testified twice at the hearing. During his first testimony, the DOE consultant-psychiatrist confirmed his opinion that the individual suffers from an Alcohol Related Disorder NOS. *Id.* at 28. He testified that to achieve rehabilitation, the individual must be abstinent from alcohol for 12 months, undergo active alcohol treatment, establish a support network such as AA, and change his lifestyle. *Id.* at 35. The DOE consultant-psychiatrist testified a second time after he had listened to the testimony of the other witnesses. He remained firm in his view that the individual needs one year of sobriety (*i.e.*, until February 19, 2006) before he could be considered rehabilitated. *Id.* at 160. The DOE consultant-psychiatrist testified that based on the testimony that he heard at the hearing he believes that the individual is on the "right track." *Id.* He explained that the individual is receiving appropriate treatment and appears to have a good support network. *Id.*

f. Hearing Officer Evaluation of Evidence

The documentary and testimonial evidence in this case confirms that the individual is addressing his alcohol-related disorder. The psychologist convinced me at the hearing that the Early Recovery Program coupled with the long term therapy program will assist the individual in maintaining his sobriety and in developing a healthy, balanced lifestyle. The individual convinced me that he takes his responsibilities as a new husband and father so seriously that he will not allow alcohol to become part of his life again. While I would have been more impressed if the individual's wife had elected to abstain from alcohol while at home and to provide an alcohol-free environment while entertaining at home, my assessment is that the individual's wife is otherwise supportive of her husband's attempt to maintain his sobriety. In the end, however, not enough time has elapsed for me to conclude that the individual has achieved rehabilitation or reformation from his alcohol-related disorder. In reaching this determination, I gave considerable weight to the testimony of the psychologist and the DOE consultant-psychiatrist, two experts in the field of substance abuse disorders. Both experts convinced me that the individual needs 12 months of sobriety in addition to treatment and lifestyle changes to achieve rehabilitation or reformation. Both experts also convinced me that the individual is at risk for experiencing a significant defect in his judgment and reliability until that 12 month period elapses. The individual will not reach 12 months of sobriety until February 19, 2006. In the end, I must find that the individual has not mitigated the DOE's security concerns under Criterion H.

B. Criterion K

1. The Derogatory Information and the Accompanying Security Concerns

To justify its reliance on Criterion K in this case, the DOE refers to statements made by the individual in the 2004 PSI about his extensive drug use over a period of 17 years. From a security perspective, any involvement with illegal drugs shows a willingness to violate criminal laws. As such, when a person is involved with illegal drugs, a security concern is raised about a person's willingness or ability to follow the rules regarding the protection of classified information. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline H.

2. Mitigation

The individual testified that he stopped using marijuana in July 2000 (Tr. at 124) and has no intention of using any illegal drugs again. *Id.* at 126. The individual's wife testified that she has never seen her husband use any illegal drugs. *Id.* at 104-105.³ Friend #1 testified that he saw the individual smoke marijuana in the 1980s. *Id.* at 78. Friend #1 does not know the last time he saw the individual using illegal drugs but he is certain that it was long ago. *Id.*

In evaluating the totality of the circumstances surrounding the individual's illegal drug use, I determined that the following factors did not augur in the individual's favor. First,

³ The wife testified that while they wed in July 2004, she has known him for two and one-half years. *Id.*

the individual's willful disregard for the law by using illegal drugs is a serious matter. Second, the individual engaged in this illegal conduct over an extended period of time, *i.e.*, 17 years. Third, the individual's conduct was both voluntary and knowing. Fourth, the individual was a mature man in his late 20s and early 30s for a portion of the time that he used the illegal drugs.

Against these negative factors, I considered the following positive factors. First, the individual, his wife and Friend #1 convinced me that the individual has not used illegal drugs in five years. Second, the individual provided credible assurances during the 2004 PSI and under oath at the hearing that he will not use drugs in the future. Third, the individual convinced me through his testimony and his demeanor that the use of illegal drugs is inconsistent with his new responsibilities as a husband and a stepfather. Fourth, the individual's change in lifestyle from a bachelor to a husband and father lends support to a finding that the individual's illegal conduct is unlikely to recur. Finally, I also favorably considered the psychologist statement that one of the goals of the alcohol recovery program which the individual attends is "sustained abstinence of **all** mind-altering substances and the psychological and behavioral changes that both support abstinence and the development of a healthy, balanced lifestyle (emphasis added.)" Ex. E at 1. The psychologist convinced me that the individual's ongoing alcohol treatment will also assist the individual in refraining from recreational drug use.

In the end, the decision whether the individual has mitigated the Criterion K security concerns is, in my opinion, a close call. The ultimate question is whether 17 years of substantial, continuous illegal use can be mitigated by five years of abstinence from those illegal substances. In this case, after carefully weighing all the evidence, I have determined that the positive factors outweigh the negative ones. I find, therefore, that the weight of the evidence mitigates the Criterion K concerns at issue here.

C. Criterion L

The DOE's Criterion L concerns are predicated on the individual's two arrests, one in 2000 for DUI and the other in 1987 for Possession of Marijuana. The individual's arrests are problematic from a security standpoint because they call into question the individual's honesty, reliability and trustworthiness. Those arrests also raise questions about the individual's susceptibility to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of national security.

The individual's arrest for marijuana possession in 1987 is almost 18 years old. The remoteness in time of this incident, combined with my determination set forth in Section IV.B. above that the individual has mitigated the security concerns associated with Criterion K, lead me to conclude that the individual will not again be arrested for drug possession.

Regarding the 2000 DUI arrest, I find that it is linked to the individual's alcohol-related disorder. Even though this arrest occurred five years ago, my common sense decision is that this arrest cannot be mitigated until the individual is rehabilitated or reformed from his alcohol related disorder. When the individual achieves rehabilitation or reformation from his alcohol-related disorder, I could then find that the individual's criminal conduct

is unlikely to recur. Until that time, I cannot find that the individual has mitigated all of the DOE's security concerns attendant Criterion L.

V. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H, K and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the LSO under Criteria H and L. I therefore cannot find that granting the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: October 3, 2005